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MR. EUGENE WAMBAUGH, A.B. 1876, LL.B. 1880, has been recently appointed a Professor in the Law Department of the State University of Iowa.

THE learned article by Professor Maitland which we print in this number is a contribution to legal learning of great value, and it is probably one which no other man could have written. Scholars are familiar with Professor Maitland's valuable and very readable communications in the "English Law Quarterly Review" within a few years. He has edited also in a thorough and admirable manner the two volumes of the Selden Society, as well as another volume of his own, presenting judicial records of the thirteenth century. And he has published at his own cost the invaluable series of early cases known as "Bracton's Note Book." For some years he was Reader of English Law at the English Cambridge, and later became, as he now is, the Downing Professor of English Law there.

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"DOUBTLESS, there was a constant tendency to make seisin a matter of forms and ceremonies, of sacramental acts with rod or twig or hasp of door," says Professor Maitland in one of his articles.<sup>1</sup> Some recently published<sup>2</sup> extracts from early Connecticut records show in an interesting way that this tendency became crystallized into a solemn mummery, and was brought over to the colonies in the shape of a well-defined custom. East Hartford, for example, "voted that two of said committee shall go and enter upon said property and take possession thereof by Turf and Twigg, fence and enclose a piece of the same, break up and sow grain thereon within the enclosure, and that they do said service in right of all the proprietors, and take witness of their doings in writing, under the witness hands." Again, two inhabitants of Hartford testify, "as we were going from Hartford to Wethersfield, Jeremy Adams overtook us and desired that we would step aside and take notice of his giving possession of a parcell of land to Zachary Sandford, which we did, and it was a parcell of land on the road that goeth to Wethersfield, and we did see Jeremy Adams deliver by Turf and Twigg all the right, title and interest that he hath or ever hath of the whole parcell of land to Zachary Sandford."

Further, there existed in Massachusetts the custom of feoffment by livery of seisin in the first years of the colony. Professor Washburn says that it was formally done away by statute in 1642.<sup>3</sup> Livery is said to have existed also in York, Me., until 1692,<sup>4</sup> and it was possible in Pennsylvania until 1772.<sup>5</sup> But it is to be noticed that the colonies did away with livery long before England herself did.<sup>6</sup> In fact, there still remains in England one case where livery of seisin accompanying feoffment is effective without a deed.<sup>7</sup>

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A MANAGER stole certain negotiable securities from his employers and sold them to X, who paid value and who was innocent of the fraud. Afterward the manager obtained by fraud from X a portion of the original bonds and some other bonds of a like kind and corresponding

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<sup>1</sup> *L. Q. Rev.* 334, 335.

<sup>2</sup> *Johns Hopkins University Studies*, seventh series, vii. - ix. p. 41, n. 2.

<sup>3</sup> *Washburn, Real Property*, \*34, n.

<sup>4</sup> *Sullivan, Land Titles*, p. 88.

<sup>5</sup> *Washburn, Real Prop.* \*34, n. 2.

<sup>6</sup> 1845. Stat. 8 & 9 Vict. c. 106.

<sup>7</sup> *Williams, Seisin of the Freehold*, p. 105.

value. These bonds were returned to the employers, who knew nothing of the whole transaction. Can X sue the employers and recover the bonds?

This is the case of *The London and County Banking Company v. The London and River Plate Bank*.<sup>1</sup>

The question as a point of extreme legal nicety is an interesting and difficult one. "It is absolutely new, and must be decided on principle," remarks Lord Justice Lindley. The Court of Appeals holds that the defendants, *i. e.*, the employers, have given value for the bonds, and so can retain them. The value given is this: the defendants have lost a right to sue the manager for conversion by accepting from him the bonds in question. The right to sue for the conversion of the bonds has been exchanged for the bonds themselves. Acceptance of the bonds by the defendants is presumed, because "it would be contrary to human nature to suppose that the defendants would not have kept the bonds if they had known of their theft from themselves, and of their restoration; and we know as a fact that the defendants have insisted on their right to retain the bonds ever since they discovered the theft." There is the analogous doctrine that the acceptance of a gift is presumed,<sup>2</sup> even when the gift is of an onerous nature.<sup>3</sup> This is the argument of Lord Justice Lindley. Lord Esher, M. R., seems to regard acceptance as immaterial, for he says: "When he restored them they lost their right, for how could they bring an action for the conversion of instruments which were in their own possession? I am of the opinion that the destruction of this right of action is a value moving from them, and that it is immaterial that they did not know what they were doing." No direct authority is cited by either Lord Justice.

The cases of *Thorndike v. Hunt*<sup>4</sup> and *Taylor v. Blakelock*,<sup>5</sup> however, both seem to support this doctrine. In the former case a trustee misappropriated part of one trust fund, and being called on to account and pay into court the amount of the trust, he fraudulently misapplied part of another trust fund to make good the deficiency; the court decides that the *cestuis* of the first trust estate can retain the proceeds of the second misapplication, because they have given value; *i. e.*, "There was a debt due from the trustees; they were called on to pay it, and if it had not been paid, they would have been liable to execution." The latter case is quite similar. One Carter was a trustee with the plaintiff under a will, and also trustee with the defendant under a settlement. Carter misappropriated part of the settlement fund, replacing, however, what he had taken by a corresponding portion of the will fund. Carter then died. It was *held* that the trust funds should not be disturbed; the defendant is a purchaser for value, because "in taking payment he relinquishes the right for the fruition of the right."

There seems to be no real distinction between the cases just cited and *The London and County Banking Co. v. The London and River Plate Bank*. The values, to be sure, given in the former cases are equitable *choses in action*, while the value given in the latter case is a legal right to sue for the tort. This, it is believed, is no reason for distinguishing the principles of the two decisions.

<sup>1</sup> L. R. 20 Q. B. D. 232, and L. R. 21 Q. B. D. 535; 61 L. T. Rep. N. S. 37.

<sup>2</sup> 3 Co. Rep. 25 a; 31 Ch. D. 282.

<sup>4</sup> 3 De G. & J. 563 (1859).

<sup>5</sup> 5 El. & Bl. 367, at p. 382.

<sup>6</sup> L. R. 32 Ch. D. 560 (1886).

"It is," says Bacon, V. C., in *Taylor v. Blakelock*,<sup>1</sup> "one of those painful cases, in which, as between two innocent persons, a loss having been sustained, the court is to decide upon whom that loss shall fall." Why not let the loss lie where it falls?

The Supreme Court of Illinois has taken advantage of the summer vacation to fortify by a decision<sup>2</sup> the long-prevalent but erroneous notion that real estate remaining unsold at the dissolution or civil death of a corporation reverts to the original grantor or his heirs. This case seems a little strange, coming, as it does, three years after Professor Gray's "Rule against Perpetuities," although the error began with Lord Coke, and has been repeated times enough since to make it seem law.<sup>3</sup> At all events, however, the court can enjoy the self-satisfaction of having brought forth the first off-spring of this time-honored delusion. Not only is this case the first real decision for the opinion professed in it, but every authority cited in support of the conclusion is traceable directly or indirectly back to Co. Lit. 13b. Now Hargrave's note to this very passage shows that the other judges of the time were of a contrary opinion, while Professor Gray's analysis<sup>4</sup> of Coke's authorities discloses a single *dictum* of Choke, J., as a lonesome justification for Coke's assertion. Moreover, constant efforts have been made to get away from the force of this erroneous doctrine. It is the law, for instance, that it applies to charitable corporations only. Again, it has been said that the doctrine applies to pure gifts and not to transfers on consideration.<sup>5</sup> Furthermore, it is sometimes modified by statute.<sup>6</sup>

It had been hoped that this decision would never be arrived at when the case came up for judgment. And it is suspected that the case was not presented to the court by counsel in a very thorough manner. It is time that a notion so incorrect and so disturbing should be discounted in high places.

<sup>1</sup> L. R., 32 Ch. D. p. 565.

<sup>2</sup> *Mott v. Danville Seminary*, 21 N. E. Rep. 927 (15 June, 1889), digested in this number, p. 136.

<sup>3</sup> Co. Lit. 13b. (1628); 1 Bl. Com. 484. (1765); 2 Kent, 307, 12th ed. (1873); 102 Ill. 315, 323 (1882); 19 Mo. App. 26, 31 (1885); 23 S. C. 297, 298 (1885); Angell and Ames on Corps. § 105, 11th ed. (1882); 2 Morawetz on Corps. § 1031, 2d ed. (1886); Gray on Perpetuities, § 51, n. 4 (1886).

<sup>4</sup> Gray on Perpetuities, §§ 44-48.

<sup>5</sup> 19 Mo. App. 26.

<sup>6</sup> 18 Pick. 66; St. 189, c. 3.